

ORIGINAL

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys At Law
A Law Corporation

PAUL ALSTON 1126-0
BRUCE H. WAKUZAWA 4312-0
GLENN T. MELCHINGER 7135-0
JASON H. KIM 7128-0

American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
Email: gtm@ahfi.com

Attorneys for Plaintiffs
and Third-Party Defendants
the Sports Shinko Companies

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 01 2007 *Ag*
at 2 o'clock and 00 min. PM
SUE BEITIA, CLERK

LODGED

APR 19 2007
11:00 AM
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,	)	CV 04-00124 ACK-BMK
	)	CV 04-00125 ACK-BMK
Plaintiff,	)	CV 04-00126 ACK-BMK
	)	CV 04-00127 ACK-BMK
vs.	)	CV 04-00128 ACK-BMK
)	
QK HOTEL, LLC, et al.,	)	CONSOLIDATED CASES
)	
Defendants,	)	STIPULATION AND ORDER TO
	)	FILE REDACTED EXHIBITS
and	)	[TITLE CONTINUES ON NEXT PAGE]
)	
FRANKLIN K. MUKAI, et al.,	)	Date: February 12, 2007
	)	Time: 9:30 a.m.
	)	Judge: Judge Alan C. Kay

Third-Party Plaintiffs,	)	H-1, 26, AND 27.1; REDACTED
	)	DECLARATION OF DOREEN
vs.	)	GRIFFITH AND REDACTED
	)	EXHIBITS "G-1"-"G-7" TO
SPORTS SHINKO (USA) CO.,	)	DECLARATION; REDACTED
LTD., et al.,	)	DECLARATION OF MICHAEL
	)	A. COHAN; REDACTED KG
Third-Party	)	PARTIES' SUPPLEMENTAL
Defendants,	)	MEMORANDUM IN SUPPORT
	)	OF MOTION TO DISMISS AND
and	)	REDACTED KG EXHIBITS
	)	"C-2" & "31-33" RELATED TO
SPORTS SHINKO (HAWAII) CO.,	)	KG DEFENDANTS' MOTION TO
LTD., et al.,	)	DISMISS CV. NOS. 04-00125
	)	ACK-BMK, 04-00126
	)	ACK-BMK AND 04-00128
Third-Party Defendants/	)	ACK-BMK FOR LACK OF
Counterclaimants,	)	SUBJECT MATTER
	)	JURISDICTION FILED
vs.	)	NOVEMBER 16, 2006
)	
QK HOTEL, LLC, et al.,)	
)	
Third-Party Counterclaim)	
Defendants.)	
)	
AND CONSOLIDATED CASES)	
_____)	

STIPULATION AND ORDER TO FILE REDACTED EXHIBITS H-1, 26, AND 27.1; REDACTED DECLARATION OF DOREEN GRIFFITH AND REDACTED EXHIBITS "G-1"-"G-7" TO DECLARATION; REDACTED DECLARATION OF MICHAEL A. COHAN; REDACTED KG PARTIES' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND REDACTED KG EXHIBITS "C-2" & "31-33" RELATED TO KG DEFENDANTS' MOTION TO DISMISS CV. NOS. 04-00125 ACK-BMK, 04-00126 ACK-BMK AND 04-00128 ACK-BMK FOR LACK OF SUBJECT MATTER JURISDICTION FILED NOVEMBER 16, 2006

Plaintiffs and Third Party Defendants Sports Shinko Co., Ltd., Sports Shinko (USA) Co., Ltd., Sports Shinko (Hawaii) Co., Ltd., Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Sports Shinko (Pukalani) Co., Ltd., Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Waikiki) Corporation, and Ocean Resort Hotel Corporation (collectively "**Sports Shinko**"), and Defendants, Third Party Plaintiffs and Third Party Counterclaim Defendants KG Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna Golf Club, LLC and KG Kauai Development, LLC (collectively, "**KG**"), and Defendant and Third Party Plaintiff Franklin Mukai ("**Mukai**"), through their respective counsel, hereby recite and stipulate as follows:

RECITALS:

WHEREAS on November 16, 2006, KG filed a Motion to Dismiss CV. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK For Lack Of Subject Matter Jurisdiction (the "Motion");

WHEREAS KG Exhibits 6, 7, 8, 10, 11 and 12 were filed in redacted form pursuant to the Stipulation Regarding Certain Exhibits in Support of KG Defendants' Motion to Dismiss CV. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK for Lack of Subject Matter Jurisdiction Filed November 16, 2006; Order, Redacted Exhibits 6-8 & 10-12, filed on January 5, 2006 but were not filed in unredacted form under seal;

WHEREAS on April 5, 2007, the Order Regarding Stipulations to Redact and Seal Exhibits and Documents Related to the Motion to Dismiss in Civ. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK (the "Redaction Order") was filed;

WHEREAS the Sports Shinko Parties assert that Exhibits H-1, 26, and 27.1, the Declaration of Doreen Griffith,

Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A. Cohan, the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, and KG Exhibits C-2, 31, 32 and 33 contain certain financial and tax income information related to Sports Shinko and certain third parties designated as confidential under the Stipulated Protective Order entered on January 25, 2005, and Sports Shinko seeks to protect that information from public disclosure through redacting the exhibits, declarations, and memorandum as more fully set forth below;

WHEREAS the Sports Shinko Parties assert that "no one outside the litigation is seeking to unseal the motion or responses" or the exhibits (*see Madsen v. Fortis Benefits Ins. Co.*, No. CV 04-1959-PHX-JAT, 2006 WL 1981785 (D. Ariz. Jul. 13, 2006));

WHEREAS 26 U.S.C. § 6103 and other provisions of the Internal Revenue Code protect the confidentiality of "return information" and "taxpayer return information," as defined in IRC §§ 6103(b)(2) and (3);

WHEREAS "return information" is not available to the public. *See Church of Scientology v. IRS*, 484 U.S. 9, 18 (1987); *Kamman v. United States IRS* 56 F.3d 46, 48 (9th Cir. 1995);

WHEREAS the Sports Shinko Parties assert that Exhibits 26 and 27.1, the Declaration of Doreen Griffith, Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A. Cohan, the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, and KG Exhibits C-2, 31 and 32 contain information used as "return information" and/or "taxpayer return information" by Sports Shinko, and Sports Shinko asserts these exhibits, declarations, and memorandum should be redacted as shown in the attached Exhibits to this Stipulation to prevent disclosure of such information;

WHEREAS the Sports Shinko Parties assert that Exhibit H-1 and KG Exhibit 33 contain bank account routing numbers and other specific financial information that, if disclosed, could lead to improper use and result in injury to Sports Shinko, and Sports Shinko asserts these exhibits should be redacted as

shown in the attached Exhibits to this Stipulation to prevent disclosure of such information;

WHEREAS the Sports Shinko Parties assert that Exhibit H-1 contains confidential financial information related to third parties that is not available to the public, and Sports Shinko asserts these exhibits should be redacted as shown in the attached Exhibits to this Stipulation to prevent disclosure of such information;

WHEREAS the Sports Shinko Parties waive the initial claim of confidentiality under the January 25, 2005 Stipulated Protective Order as to the information not proposed to be sealed as set forth above or otherwise in the record;

WHEREAS the Motion concerns jurisdictional issues, as opposed to the merits of the parties' claims;

WHEREAS the Sports Shinko Parties assert that *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), should not apply under the circumstances here, and that, nevertheless, safeguarding the confidentiality of the information in the exhibits, declarations, and memorandum constitutes a

"compelling reason" to permit these exhibits, declarations, and memorandum to be filed under seal; and

WHEREAS the non-Sports Shinko parties do not necessarily agree to or otherwise concede the accuracy of the assertions made in the preceding whereas clauses, and the non-Sports Shinko parties in the interest of judicial economy do not object to the filing of the exhibits, declarations, and memorandum under seal in connection with the disposition of the Motion, provided that this stipulation does not affect in any respect either the non-Sports Shinko parties' substantive rights in this litigation or the future treatment of the documents and/or information so sealed and redacted;

WHEREAS in paragraph 1.E. of the Redaction Order, the Court stated, with respect to Exhibits H-1, 26, and 27.1, that although these Exhibits could not be filed under seal in their entirety, "compelling reasons may justify sealing portions of these exhibits" and similarly stated, in paragraph II of the Redaction Order, with respect to the Declaration of Doreen Griffith, Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A.

Cohan, the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, and KG Exhibits C-2, 31, 32 and 33 that although these documents could not be filed under seal in their entirety, "compelling reasons may justify sealing portions of these exhibits and documents";

WHEREAS on February 1, 2007, the KG Parties filed in redacted form their Reply Memorandum in Support of Motion to Dismiss, and as directed by paragraph I.C. of the Redaction Order, on April 6, 2007, the KG Parties re-filed their Reply Memorandum with fewer redactions;

WHEREAS upon the filing hereof, counsel for the Sports Shinko Parties shall serve on chambers of the Court unredacted versions of the documents referenced above and, upon approval of this Stipulation, will submit to the Clerk unredacted versions of the foregoing documents and exhibits for filing under seal;

NOW THEREFORE the Parties stipulate as follows:

A. Exhibits H-1, 26, and 27.1, the Declaration of Doreen Griffith, Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A. Cohan, the KG Parties' Supplemental

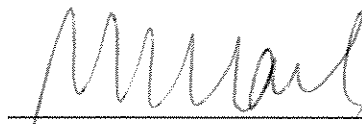
Memorandum in Support of Motion to Dismiss, KG Exhibits C-2, 31, 32 and 33, may be filed in the public record as redacted and attached hereto; and

B. The following exhibits and documents may be filed under seal without redactions:

1. KG Exhibits 6, 7, 8, 10, 11, 12, 26, 27.1, 31, 32, 33, C-2, the Declaration of Michael A. Cohan, the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, and the KG Parties' Reply Memorandum.

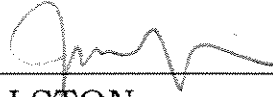
2. Sports Shinko Parties' Exhibit H-1, Declaration of Doreen Griffith, and Exhibits G-1 through G-7 to that Declaration.

DATED: Honolulu, Hawai'i, APR 18 2007.



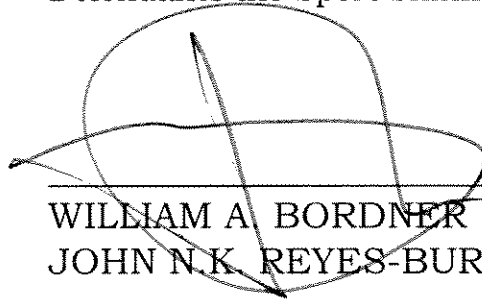
WARREN PRICE, III
ROBERT A. MARKS

Attorneys for KG Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna Golf Club, LLC and KG Kauai Development, LLC



PAUL ALSTON
BRUCE H. WAKUZAWA
GLENN T. MELCHINGER
JASON H. KIM

Attorneys for Plaintiffs and Third-Party-
Defendants the Sport Shinko Companies



WILLIAM A. BORDNER
JOHN N.K. REYES-BURKE

Attorneys for Franklin Mukai

ORDER

The Court, having reviewed the foregoing Stipulation, the exhibits thereto and Exhibits 6, 7, 8, 10, 11, 12, H-1, 26, and 27.1, the Declaration of Doreen Griffith, Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A. Cohan, the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, KG Exhibits C-2, 31, 32 and 33, and the KG Parties' Reply Memorandum in Support of Motion to Dismiss, which documents were delivered to the Court's chambers without redactions;

HEREBY FINDS AND ORDERS as follows:

A. There are sufficient reasons to support the filing of the following exhibits as redacted and attached hereto: Exhibits H-1, 26, and 27.1, the Declaration of Doreen Griffith, Exhibits G-1 through G-7 to that Declaration, the Declaration of Michael A. Cohan, and the KG Parties' Supplemental Memorandum in Support of Motion to Dismiss, KG Exhibits C-2, 31, 32 and 33.

B. There are sufficient reasons to support the submission of above-referenced exhibits and documents that were delivered to Chambers without redactions and under seal.

C. KG Parties' Reply Memorandum in Support of Motion to Dismiss, filed February 1, 2007, which was re-filed on April 6, 2007 with redactions as an attachment to the KG Parties Notice of Re-Filing of Reply Memorandum in Support of Motion to Dismiss CV. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK for Lack of Subject Matter Jurisdiction as directed by the Court, may be filed under seal, without exhibits and without redactions.

Dated: Honolulu, Hawai'i, MAY 01 2007.



United States District Judge

STIPULATION TO FILE REDACTED EXHIBITS H-1, 26, AND 27.1; REDACTED DECLARATION OF DOREEN GRIFFITH AND REDACTED EXHIBITS "G-1"- "G-7" TO DECLARATION; REDACTED DECLARATION OF MICHAEL A. COHAN; REDACTED KG PARTIES' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND REDACTED KG EXHIBITS "C-2" & "31-33" RELATED TO KG DEFENDANTS' MOTION TO DISMISS CV. NOS. 04-00125 ACK-BMK, 04-00126 ACK-BMK AND 04-00128 ACK-BMK FOR LACK OF SUBJECT MATTER JURISDICTION FILED NOVEMBER 16, 2006, *Sports Shinko Co., Ltd. v. QK Hotel, LLC, et al.*, D. Hawaii Civil No. CV4-00124 ACK-BMK and consolidated cases